

Message Text

CONFIDENTIAL

PAGE 01 NAIROB 05834 01 OF 02 111454Z

46

ACTION AF-04

INFO OCT-01 SS-14 ISO-00 NSC-07 NSCE-00 L-02 SCA-01 EB-03

COME-00 INT-01 CIAE-00 INR-10 NSAE-00 RSC-01 PRS-01

DRC-01 /046 W

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R 111425Z JUL 74

FM AMEMBASSY NAIROBI

TO SECSTATE WASHDC 8051

C O N F I D E N T I A L SECTION 1 OF 2 NAIROBI 5834

LIMDIS

E.O. 11652: GDS

TAGS: BDIS, CPRS, KE, US

SUBJECT: SAUL CASE

REF: NAIROBI 5585

1. THREE MEETINGS HAVE TAKEN PLACE THIS WEEK WHICH YIELDED NEW INFORMATION ON SAUL CASE. FIRST MEETING WAS BETWEEN ATTORNEY GENERAL NJONJO AND SAUL'S LAWYERS. SECOND MEETING WAS MY CALL ON MINISTER OF NATURAL RESOURCES OMAMO, AND THIRD WAS MR. MILLER'S VISIT TO THE EMBASSY.

2. SAUL'S LAWYERS MET INFORMALLY WITH NJONJO JULY 8 TO SEEK HIS ADVICE ON WHICH OF TWO ALTERNATIVE COURSES OF ACTION WOULD BE BEST FOR SAUL: WHETHER TO NEGOTIATE WITH CRITICOS, ET AL, OR TO GO TO KENYAN COURTS WITH CASE. NJONJO REPLIED THAT THEY SHOULD ABSOLUTELY NOT GO TO COURTS AS CRITICOS WOULD GET PRESIDENT KENYATTA TO EXPEL LAWYERS INVOLVED JUST AS HE GOT PRESIDENT TO EXPEL SAUL.

3. ACCORDING TO SAUL'S LAWYERS, NJONJO ALRO SAID THAT WHEN ORDERED BY PRESIDENT TO EXPEL SAUL, V.P. MOI WENT THROUGH MOTIONS BUT DID NOT ISSUE A FORMAL PROHIBITED IMMIGRANT ORDER, NJONJO
CONFIDENTIAL

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PAGE 02 NAIROB 05834 01 OF 02 111454Z

STATED KENYATTA DOES NOT KNOW THAT MOI FAILED TO CARRY OUT

PRESIDENT'S DIRECTIVE AND WOULD BE VERY ANGRY IF HE FOUND OUT.
(THIS PRESUMABLY MAKES HIS EXPULSION ILLEGAL.)

4. BECAUSE OF THE THREAT TO THEM CONVEYED IN NJONJO'S REMARKS, LAWYERS REPRESENTING SAUL ARE EXTREMELY RELUCTANT TO TAKE THE CASE TO COURTS AND IF PRESSED BY SAUL TO DO SO, WOULD PROBABLY REFUSE.

5. SECOND MEETING

WAS YESTERDAY, JULY 10, BETWEEN MINISTER OMAMO AND ME. I HAD REQUESTED APPOINTMENT JUNE 28 BUT THIS WAS EARLIEST OPPORTUNITY HE COULD SEE ME. OUR MEETING LASTED OVER AN HOUR, MOST OF WHICH WAS TAKEN UP WITH EVASIVE ANSWERS. ONLY WHEN I CONFIDED TO THE MINISTER THAT WE BOTH KNEW MORE THAN WE WERE SAYING BUT THAT I, AS MUCH AS HE, AM CONCERNED WITH THE SENSITIVE NATURE OF THE CASE DID OMAMO BECOME MORE OPEN IN HIS DISCUSSION. HE CONFIRMED THAT MOI HAD RECEIVED INSTRUCTIONS TO DEPORT SAUL AND THAT PRESIDENT HAD AN "INTEREST" IN THE CASE. HE FURTHER STATED THAT IF ACCUSATIONS WERE MADE IN PRESS THEY WOULD "PINCH THE PRESIDENT" WHO WOULD REACT; "HE WILL NOT BEND" ON THE ISSUE; HE HAS NOT BENT ON OTHER ISSUES (E.G., SUDDEN DECISION TO MAKE SWAHILI OFFICIAL LANGUAGE OF PARLIAMENT DESPITE PRACTICAL DIFFICULTIES AND CONSTITUTIONAL OBJECTION RAISED BY SEVERAL MEMBERS OF PARLIAMENT).

6. I WAS ALSO ABLE TO PRY SOME SPECIFIC INFORMATION OUT OF OMAMO REGARDING STATUS OF SAUL'S MINING INTERESTS. OMAMO STATED THAT GOK TOOK POSITION THAT SAUL NO LONGER HAD ANY LEGAL MINING RIGHTS IN COUNTRY AND HIS CLAIMS WERE THEREFORE "DIVIDED AMONG OTHER INTERESTED CLAIMANTS."

7. WHEN I ENQUIRED ABOUT REASONS FOR EXPULSION OF SAUL, OMAMO STATED ACTION DATED BACK TO A DECEMBER 1973 LETTER WHICH WAS WRITTEN "BY SEVERAL PERSONS" AND SENT TO HIS MINISTRY. HE DID NOT NAME THESE PERSONS BUT DID CONFIRM THAT THEY WERE IN NO WAY CONNECTED WITH CRITICOS. HE STATED THAT HE PERSONALLY NEVER SAW THIS LETTER WHICH WAS RELAYED TO THE MINISTRY OF HOME AFFAIRS FOR ACTION. THIS MINISTRY, OMAMO SIAD, MOVES SLOWLY AND DIDN'T CONFIDENTIAL

CONFIDENTIAL

PAGE 03 NAIROB 05834 01 OF 02 111454Z

TAKE EXPULSION ACTION AGAINST SAUL UNTIL LAST MONTH. HE HINTED THAT THIS WAS ONLY ONE REASON FOR SAUL'S EXPULSION, BUT THAT IT WAS START OF MOVE TO EXPEL HIM. OMAMO ADDED THAT KENYATTA HAS STATED THAT EVERYTHING THAT IS UNDERGROUND BELONGS TO KENYANS.

8. FINALLY, JUST BEFORE I LEFT MEETING, OMAMO DROPPED ANOTHER BOMBHELL. HE STATED THAT "TOMORROW" (JULY 11) PRESIDENT'S BROTHER (I PRESUME HE MEANS JAMES MUGUI) WOULD BE IN OMAMO'S

OFFICE TO DISCUSS SAUL CASE. JAMES MUGUT'S PARTICULAR CONCERN INVOLVES "ANOTHER PARTY" LYING CLAIM TO MINE. I ASKED WHETHER HE WAS REFERRING TO CRITICOS AS OTHER PARTY. HE SAID, NO, TO "SOMEONE IN OFFICE OF ATTORNEY GENERAL."

9. THIRD MEETING WAS WITH MILLER IN MY OFFICE YESTERDAY AFTER-NOON. I TOLD HIM THAT OMAMO HAD VERY LITTLE TO SAY AND THAT STATUS OF SAUL'S MINING INTERESTS WAS UNCLEAR. I DID NOT TELL MILLER EVERYTHING OMAMO SAID TO ME AS THIS INFORMATION COULD LATER GET INTO THE PRERS IF SAUL DOES NOT OBTAIN A FAVORABLE SETTLEMENT HERE. FURTHERMORE MILLER TOLD ME THAT HE IS TELLING ALL TO FOREIGN MINISTER MUNGAI AS PART OF MILLER'S "FRANK NEGOTIATIONS" WITH MUNGAI. MILLER MET WITH MUNGAI SATURDAY, JULY 6, AS PART OF THESE NEGOTIATIONS AND MUNGAI WAS STILL CONFIDENT THAT, FOR APPROPRIATE CONSIDERATION, HE COULD GET BACK MINE FOR SAUL. MILLER EXPECTS TO HAVE ANOTHER MEETING WITH MUNGAI LATE THIS WEEK AND HAS ASKED ME TO TAKE NO FURTHER ACTION UNTIL AT LEAST NEXT MONDAY OR AFTER HIS MEETING WITH MUNGAI, WHICHEVER COMES LATER.

10. AFTER TALKING WITH OMAMO AND RECEIVING THE REPORT ON LAWYERS' CONVERSATION WITH NJONJO, I ATTEMPTED TO MAKE AN APPOINTMENT WITH ATTORNEY GENERAL. AT FIRST HIS OFFICE TOLD ME THAT HE WOULD BE TOO BUSY TO SEE ME IN NEAR FUTURE AND LATER WHEN I INFORMED HIS OFFICE THAT I WISHED TO DISCUSS SAUL CASE, I WAS TOLD THAT ATTORNEY GENERAL HAD NOTHING TO DO WITH IT AND I SHOULD SEE VICE PRESIDENT.

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PAGE 01 NAIROB 05834 02 OF 02 111459Z

46

ACTION AF-04

INFO OCT-01 SS-14 ISO-00 NSC-07 NSCE-00 L-02 SCA-01

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R 111425Z JUL 74

FM AMEMBASSY NAIROBI

TO SECSTATE WASHDC 8052

C O N F I D E N T I A L SECTION 2 OF 2 NAIROBI 5834

LIMDIS

11. WHERE DO WE GO NEXT? WHILE I BELIEVE WE SHOULD WAIT DENOUEMENT IN FEW DAYS OF MUNGAI EFFORTS TO PUT TOGETHER COMPANY WHICH WOULD RETAIN SOME INTEREST FOR SAUL AND MILLER, I AM NOT AT ALL SANGUINE THAT MUNGAI WILL BE SUCCESSFUL IN THIS RESPECT. IT IS CLEAR THAT FATE OF SAUL AND HIS INTERESTS RESTS FINALLY IN HANDS OF PRESIDENT KENYATTA. CONCEIVABLY, I COULD SEEK AND OBTAIN AN APPOINTMENT TO SEE HIM. HOWEVER, GIVEN HIS PERSONAL FINANCIAL STAKE IN CASE, HIS BAD TEMPER AND INCREASING STUBBORNNESS, I DOUBT THAT I WOULD SUCCEED IN CHANGING HIS MIND ON THE SAUL AFFAIR. IF FACT, ATTEMPTING TO DO SO MIGHT PROVOKE A PRESIDENTIAL REACTION WHICH WOULD BE INJURIOUS TO BROADER US INTERESTS IN KENYA.

12. I REGRET HAVING TO MAKE THIS PESSIMISTIC APPRAISAL OF SITUATION. UNFORTUNATELY, WE MUST NOW INCREASINGLY RECOGNIZE THAT WE HAVE A CHANGING SITUATION IN THIS COUNTRY. AS RECENTLY AS ONE YEAR AGO, DIPLOMATS REGULARLY ASKED THEMSELVES APPREHENSIVELY WHAT WOULD HAPPEN AFTER KENYATTA GOES. NOW WE MUST INCREASINGLY ASK OURSELVES (ALSO APPREHENSIVELY) WHAT WILL HAPPEN IF HE REMAINS, GIVEN HIS GROWING GREED, UNWILLINGNESS TO TAKE ADVICE AND PERSONAL INSISTENCE TO SEE HIS IDEAS ACTED ON IMMEDIATELY AND WITHOUT EITHER PRE-PLANNING OR GOVERNMENT AGREEMENT.

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PAGE 02 NAIROB 05834 02 OF 02 111459Z

13. WHILE IT WILL NOT CHANGE OUTCOME OF SAUL CASE, I WOULD RECOMMEND THAT WE AT LEAST GO ON WRITTEN RECORD TO PROTEST THE GOK'S EXPULSION OF SAUL. AS IN CASE OF EXPULSION OF ESSO DIRECTOR SKANE IN JANUARY, WE CAN AGAIN PMINT OUT THAT MANNER IN WHICH EXPULSION EXECUTED WAS INCONSISTENT WITH INTERNATIONAL LAW. IN ADDITION, I WOULD HOPE NOTE COULD INCLUDE STATEMNT RE INJURIOUS EFFECT SUCH ACTIONS COULD HAVE ON FUTURE US INVESTMENT AND BUSINESS ACTIVITIES IN KENYA (A POINT I HAVE BEEN MAKING ORALLY IN EACH OF MY DISCUSSIONS OF CASE WITH GOK OFFICIALS: VICE PRESIDENT, MINISTERS OF FOREIGN AFFAIRS AND NATURAL RESOURCES, PERM SECS OF FONOFF AND FINANCE AND PLANNING.)

14. WHILE IT WOULD ALSO BE DESIRABLE TO PROTEST EXPROPRIATION OF SAUL'S MINING INTEREST (WHICH APPEARS TO HAVE BEEN LEGALLY REGISTERED UNDER KENYAN LAWS), I FIND IT DIFFICULT TO SEE HOW EMBASSY CAN DO SO IN ABSENCE OF PRIVATE LEGAL ACTION IN KENYA TO ESTABLISH THAT EXPROPRIATION HAS INDEED TAKEN PLACE. IN VIEW OF WARNING GIVEN LAWYERS (PARA 2 ABOVE), SUCH ACTIONS NOW UNLIKELY.

15. WOULD APPRECIATE DEPARTMENT'S COMMENTS AND GUIDANCE.

MARSHALL

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